



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

October 26, 1995
AO-95-37

Arline Spahn
13 Curtis Street
Rockport, MA 01966

Re: Poll Worker As Public Employee

Dear Ms. Spahn:

This letter is in response to your September 20, 1995 letter requesting an advisory opinion regarding the application of the campaign finance law, M.G.L. c. 55, to you in your capacity as a poll worker.

Question: May a paid poll worker who works for a town on election day also serve as the treasurer of a political committee?

Answer: Yes, if the poll worker does not directly or indirectly solicit or receive contributions on behalf of the town committee while employed by the town on election day.

Facts: You have stated that you have been employed by the Town of Rockport, in the past, as a worker at the polls. You only work on election day which means that some years you work only one day during the year and in other years you may work as many as three days. You get paid only for the hours that you work and have earned between \$35 and \$100 a year depending on the number of town, state and national elections conducted during the year. I assume that you may also on occasion attend a training session.

You currently serve as treasurer of the Rockport Republican Town Committee ("the Committee"), a volunteer position, and wish to know whether you may be employed by the Town of Rockport as a poll worker.

Discussion: The facts set forth in your letter raise the question of whether you are a public employee subject to section 13, and if so, whether you are subject to these provisions throughout the year or only on those days during which you work as an poll worker. M.G.L. c. 55, s. 13 provides, in pertinent part, that:

No person **employed for compensation**, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution

assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever . . . (emphasis added).

A person paid any sum of money by the commonwealth or a city or town to perform services, who is not an independent contractor, is a person "employed for compensation" in the language of the statute or, in more familiar terms, a "public employee" and subject to the provisions of section 13.¹ See AO-93-24. Because you receive compensation from the Town of Rockport and you are not an independent contractor, you are a public employee at least while you are performing services as a poll worker.

This office has advised that a public employee's status is not affected by the fact that the person's employment is part-time or by the employee's decision to forgo any compensation. See AO-91-09. However, we have not answered the question whether a person who is paid to perform services only on a few specific days during a one year term is employed for compensation for the entire year or only for those specific days.

In AO-93-24, this office advised that a call fire fighter, paid on an hourly basis when responding to an emergency, was a part-time public employee subject to M.G.L. c. 55, s. 13. In that case, although the call fire fighter may have worked only a few days each year, the fundamental nature of his obligation with the town was ongoing. In short, he was a part-time employee.

Although you are technically appointed for a one year term your obligation as an election officer, in contrast with a call fire fighter's obligation, is not ongoing in nature. Rather, you are obligated to "perform services" only on one to three specific days each year. M.G.L. c. 54, s. 12. Because you are employed only for a specific period of time, i.e. election day, you are more accurately described as a "temporary" rather than a "part-time" employee of the Town of Rockport. Therefore, you are a public employee only for the days that you actually work as a poll worker.²

¹ By law, a poll worker, in the General Laws referred to as an election officer, is ultimately under the supervision and control of other town officials and "may be removed for incompetence or official misconduct." M.G.L. c. 54, s. 13. Therefore, a poll worker would not be an independent contractor. See AO-90-10.

² This opinion is limited to the facts of this case. If a poll worker is paid to perform additional services such as helping to recruit other poll workers, the poll worker may be considered a part-time, rather than a temporary, employee and should seek further guidance from this office.

By law, a political committee treasurer's responsibilities include, the direct or indirect receipt of contributions even if not the direct or indirect solicitation of contributions. M.G.L. c. 55, ss. 2 and 5. For this reason, it has been the longstanding opinion of this office, that a public employee may not serve as, or perform the duties of, a treasurer of a political committee. See AO-82-07 and AO-84-02. Since you are a public employee when you work as a poll worker, you may not also perform duties as a treasurer of a political committee during those days.

In addition to the restrictions set forth in section 13 of the campaign finance law, section 15 of chapter 55 prohibits a "person in the service" of the commonwealth or one of its subdivisions from delivering contributions to another "person in the [such] service." Although a poll worker would be considered a person in the service, we conclude you are a "person in the service" only when actually performing services as a poll worker, i.e. on election day, for the reasons set forth above.

Conclusion: It is the office's opinion that you would be a public employee only on election day when performing services as a poll worker or election officer. Therefore, you may continue to serve as the treasurer of the Republican Town Committee. You must avoid, however, any direct or indirect solicitation or receipt of monies or other things of value on behalf of the Committee on any day you work as a poll worker. In addition, please note that the Town of Rockport may place additional restrictions on your activity as an election officer. Therefore, you should consult with the Rockport Town Clerk, Frederick C. Frithsen.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,


Michael J. Sullivan
Director

MJS/cp
cc: Frederick C. Frithsen